IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Contempt Appeal Nos.3 and 4 of 2006

1. R.Anand Kumar
   Sub Collector
   Hosur Taluk
   Krishnagiri District.

2. K.Ponnuswami
   Tahsildar
   Hosur Taluk
   Krishnagiri District. .. Appellants/Respondents in both Appeals

Vs

C.Manjula .. Respondent/Petitioner in Cont.A.3/2006

V.Saradha .. Respondent/Petitioner in Cont.A.4/2006

PRAYER: Against the orders of the learned Single Judge dated 12.4.2006 and 30.8.2006 made in Contempt Petition Nos.1170 of 2005 and 22 of 2006 respectively.

For Appellants : Mr.P.S.Raman
Additional Advocate General
assisted by
Mrs. Bhavani Subbarayan A.G.P.

For Respondent : Mr.T.Ponram Kumar
in Cont.A.3/2006

For Respondent : Mr.S.Conscious Ilango
in Cont.A.4/2006

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JUDGMENT

(Judgment delivered by P.D.DINAKARAN,J.)

These contempt appeals have a common matrix. They are directed against the orders of the learned Single Judge dated 12.4.2006 and 30.8.2006 made in Contempt Petition Nos.1170 of 2005 and 22 of 2006, arising out of independent orders even dated 16.12.2005 made in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005 respectively.

2. A brief factual background giving rise to these appeals is as follows:

2.1. The respondent in Contempt Appeal No.3 of 2006 preferred W.P.No.40183 of 2005 for issue of a writ of Mandamus to forbear the respondents therein, their men, servants or agents from in any manner interfering with her possession and enjoyment or demolishing the constructions in Door No.37/17A, Plot No.91, T.S.No.11/2A2, Kamaraj Colony 2nd Cross, Hosur Taluk, Krishnagiri.

2.2. The respondent in Contempt Appeal No.4 of 2006 preferred W.P.No.40291 of 2005 for issue of a writ of Mandamus to forbear the respondent and his subordinates from in any way interfering with her peaceful possession and enjoyment of the property bearing No.19A/1, Kamaraj Colony 2nd Cross, Hosur, Krishnagiri District comprised in Survey No.11/2A/2 and Hosur Municipality Property Tax Asssessment No.17165 except by strictly following the due process of law.

2.3. Pending the above writ petitions, the respondents in these Contempt Appeals preferred W.P.M.P.Nos.43094 and 43205 of 2005 in W.P.Nos.40183 and 40291 of 2005 respectively seeking interim injunction pending the writ petitions.

2.4. The learned Single Judge by independent orders even dated 16.12.2005 made in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005 respectively granted interim injunction as prayed for and ordered notice.

2.5. It is the common case of the respondents in the Contempt Appeals that the said independent orders even dated 16.12.2005 made in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005 respectively were communicated to the appellants in the contempt appeals, but, in spite of the same, the impugned buildings were demolished on 19.12.2005.

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2.6. Complaining willful disobedience of the orders even dated 16.12.2005 made in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005, the respondents in these contempt appeals preferred Contempt Petition Nos.1170 of 2005 and 22 of 2006 respectively.

2.7. When the contempt petitions were taken up for hearing by the learned Single Judge, the contempt appellants herein/contemners, at the outset, tendered unconditional apology and further explained that the demolitions of the constructions put up by the respondents herein were not deliberate. It was explained that while injunction was granted by independent orders even dated 16.12.2005 made in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005 restraining the respondents from demolishing the impugned buildings constructed in Survey Nos.11/2A2, Kamaraj Colony 2nd Cross, Hosur Taluk, Krishnagiri, the buildings demolished by the contempt appellants are situated in Survey Nos.11/2A1, Kamaraj Colony 2nd Cross, Hosur Taluk, Krishnagiri.

2.8. However, the learned Single Judge, by order dated 12.4.2006 made in Contempt Petition No.1170 of 2005, held that the appellants herein are guilty of civil contempt and sentenced them to undergo simple imprisonment for a period of one month each and to pay a fine of Rs.1000/- each, and in default of payment, to undergo simple imprisonment for a further period of two weeks each; and by order dated 30.8.2006 made in Contempt Petition No.22 of 2006, held that the first appellant herein is guilty of civil contempt and sentenced him to undergo simple imprisonment for a period of one month and to pay a fine of Rs.1000/-, and in default of payment, to undergo simple imprisonment for a further period of two weeks. Hence, these contempt appeals.

3. Heard Mr.P.S.Raman, learned Additional Advocate General appearing for the contempt appellants, Mr.T.Ponram Kumar, learned counsel appearing for the respondent in Contempt Appeal No.3 of 2006 and Mr.S.Conscious Ilango, learned counsel appearing for the respondent in Contempt Appeal No.4 of 2006. All the learned counsel reiterated their submissions made before the learned Single Judge.

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4. At the threshold, we would like to extract the prayers in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005:

> "Prayer in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005:
> To grant interim injunction restraining the respondents, their men, servants or agents from in any

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manner interfering with my possession and enjoyment or demolishing the constructions in 37/17A, Plot No.91, T.S.No.11/2A2, Kamaraj Colony 2nd Cross, Hosur Taluk, Krishnagiri pending disposal of W.P.No.40183 of 2005

Prayer in W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005:
To pass an order of interim injunction restraining the respondent and his subordinates from in any way interfering with the petitioner's peaceful possession and enjoyment of the property bearing No.19A/1, Kamaraj Colony 2nd Cross, Hosur, Krishnagiri District comprised in Survey No.11/2A/2 and Hosur Municipality Property Tax Assessment No.17165 pending disposal of W.P.No.40291 of 2005."

5. The respondents in these contempt appeals have chosen to mention the details of property as under: (i) Door No. 37/17A, Plot No.91, T.S.No.11/2A2, Kamaraj Colony 2nd Cross, Hosur Taluk, Krishnagiri, and (ii) Door No.19A/1, Survey No.11/2A/2, Kamaraj Colony 2nd Cross, Hosur, Krishnagiri District, respectively, and this Court granted interim injunction as prayed for by independent orders even dated 16.12.2005 made in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005 respectively.

6. The explanation offered by the contempt appellants/ contemners was that the interim injunction granted by independent orders even dated 16.12.2005 made in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005 respectively, restrains them from demolishing the buildings constructed in Survey No.11/2A2 and not beyond Survey No.11/2A2. According to the contempt appellants/contemners, portions of the two buildings demolished fall outside Survey No.11/2A2, and, in fact, fall in Survey No.11/2A1, as per the field map sketch.

7. We have perused the field map sketch relating to both Survey Nos.11/2A1 and 11/2A2. When there is an apparent mistake of identity of the demolished portions of the buildings, it is a settled law that identity of the land as recorded in the public records maintained by the Revenue authorities would alone prevail. This aspect of the explanation offered by the contempt appellants was not brought to the notice of the learned Single Judge in proper perspective.

8. That apart, when the identity of the demolished portions of the buildings is doubted, the contempt appellants/ contemners or the respondents herein could have sought for a clarification as to the above discrepancy, but none among them chose to do so. On the

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other hand, in addition to the explanation offered by the contempt appellants/contemners, they also submitted unconditional apology that they never intended to disobey the orders of this Court. At this juncture, Mr.P.S.Raman, learned Additional Advocate General appearing for the contempt appellants/contemners adds that had the respondents herein mentioned both the Survey Nos.11/2A1 and 11/2A2 in the prayer sought for in the writ petitions, the contempt appellants would not have hastened to proceed with the demolition of the buildings.

9. Both the learned counsel for the respondents herein, at this point of time, seek liberty to work out their rights in the manner known to law to identify the correct survey numbers of the respective buildings. In our considered opinion, the same could be done only in appropriate civil proceedings, but not in proceedings under Article 226 of the Constitution of India, as the issue requires evidence, both oral and documentary. However, we do not propose to render any finding in this regard.

10. On the question of willful disobedience of the independent orders even dated 16.12.2005 made in W.P.M.P.No.43094 of 2005 in W.P.No.40183 of 2005 and W.P.M.P.No.43205 of 2005 in W.P.No.40291 of 2005 respectively, we are convinced with the explanation offered by the contempt appellants, particularly in view of the mistake of identity of the survey numbers in which the buildings were constructed, viz., in S.No.11/2A1 or S.No.11/2A2, and the unconditional apology tendered by them. We, therefore, find no justification in imposing the punishment as ordered by the learned Single Judge by orders dated 12.4.2006 and 30.8.2006 made in Contempt Petition Nos.1170 of 2005 and 22 of 2006 respectively.

Resultantly, we set aside the orders of the learned Single Judge dated 12.4.2006 and 30.8.2006 made in Contempt Petition Nos.1170 of 2005 and 22 of 2006 respectively, and allow these contempt appeals, of course, with an observation that the respondents in these appeals are at liberty to work out their rights in the writ petitions. No costs.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Sub Assistant Registrar
Original Side, High Court, Madras.

2. The Section Officer,
Contempt Section,
Madras-104.

1 cc to M/s. R. Vijayakhumar, Advocate, Sr. 67862
1 cc to M/s. A.L. Gandhimathi, Advocate, Sr. 67919

Contempt Appeal Nos.3 and 4 of 2006

AD (CO)
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